SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 387.

AUGUST V. ANDERSON, WARDEN, UNITED STATES PENITENTIARY, LEAVENWORTH, KANSAS, PETITIONER,

vs.

ARTHUR CORALL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

a *Caption in U. S. Circuit Court of Appeals.*

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December term. 1921, of said court, before the Honorable Walter H. Sanborn, and the Honorable Kimbrough Stone, Circuit Judges, and the Honorable Jacob Trieber, District Judge.

Attest:

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Circuit.

Be it remembered that heretofore, to wit, on the twenty-sixth day of March, A. D. 1921, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the District of Kansas, was filed in the office of the clerk of the United States Circuit Court of Appeals, in a certain cause wherein August V. Anderson, Warden of the United States Penitentiary at Leavenworth, Kansas, was appellant, and Arthur Corall was appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, is in the words and figures following, to wit:

1 *Citation and acknowledgment of service.*

(Filed Mar. 23, 1921.)

In the District Court of the United States, District of Kansas, First Division.

AUGUST V. ANDERSON, WARDEN OF THE United States Penitentiary at Leavenworth, Kansas, appellant, *vs.* ARTHUR CORALL, APPELLEE.	No. 2161.

The United States of America to the above-named appellee and to Lee Bond, his attorney of record, greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the city of St. Louis, within sixty (60) days from the date this citation bears, pursuant to an appeal duly allowed by the United States District Court for the District of Kansas, and filed in the clerk's office of said court on the 10th day of February, 1921, in a certain cause there pending, wherein August V. Anderson, warden of the United States Penitentiary at Leavenworth, Kansas, is appellant, and Arthur Corall is appellee, to show cause, if any there be, why the judgment and order rendered against the said appellant as in said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Honorable John C. Pollock, judge of the United States District Court for the District of Kansas, this 10th day of February, 1921.

JOHN C. POLLOCK, *Judge.*

Service of a copy of the within citation is hereby acknowledged this 23 day of March, 1921.

LEE BOND, *Attorney for Appellee.*

2 *Petition for writ of habeas corpus.*

(Filed Feb. 4, 1921.)

In the United States District Court, District of Kansas, First Division.

In the matter of the application of Arthur Corall, for writ of habeas corpus.

Now comes the above-named petitioner and shows to the court that he is unlawfully and illegally restrained of his liberty by one A. V. Anderson, warden of the United States Penitentiary at Leavenworth, Kansas, and that said illegal restraint is by virtue of a certain [committment] issued out of the United States District Court for the District of Illinois at Peoria, Illinois, in November, 1914, at which time your petitioner was sentenced to a term of three years in the above penitentiary. A copy of said [committment] is hereto attached, made a part hereof, and marked Exhibit No. 1.

Your petitioner further shows that he remained in said penitentiary serving the above sentence until February 24, 1916, when a parole was granted to your petitioner, and your petitioner was released from the said penitentiary.

Your petitioner further shows that afterward and while out on his said parole and in October, 1916, your petitioner was convicted at Chicago, Illinois, and was sentenced to the State penitentiary at Joliet, Illinois; that your petitioner was confined in said penitentiary at Joliet until December, 1919, when he was released from said penitentiary and returned to the custody of the above respondent for the purpose of being compelled to serve out the unexpired portion of the original sentence.

Your petitioner further alleges that under his original conviction and sentence to the United States Penitentiary at Leavenworth, Kansas, in November, 1914, that his full term of three years sentence did not terminate until November, 1917, but that your petitioner was entitled to a certain good time and that his sentence actually terminated prior to that time and on or about March 17, 1917.

Your petitioner further shows that the parole granted your petitioner from the United States Penitentiary did not stay the running of said sentence during the time your petitioner was out on said parole and that his said sentence continued to run and be in force and effect until it was legally terminated by the legal parole board of said United States Penitentiary; that in truth and in fact

3 no attempt was made by said parole board to terminate the parole of your petitioner until long past the time his sentence had duly expired and in fact not until January, 1920, at which time said parole board attempted to terminate the parole of your petitioner, but your petitioner alleges that said parole board had no right or authority at that time to terminate said parole and had no jurisdiction over your petitioner and that having served his full term in said Federal penitentiary and while on said parole that the restraint and confinement of your petitioner under and by virtue of the [committment] hereto attached and by reason of the facts herein alleged is illegal and void and your petitioner is entitled to immediate release from said unlawful confinement.

Wherefore your petitioner prays that a writ of assistance [isue] out of this honorable court, directed to the respondent A. V. Anderson, as Warden of the United States Penitentiary at Leavenworth, Kansas, ordering and directing said respondent to produce your petitioner before this honorable court and that upon a hearing had your petitioner may be ordered discharged from said illegal confinement.

ARTHUR CORELL,
Petitioner.

STATE OF KANSAS,
Leavenworth County, ss:

Arthur Corall, being duly sworn on oath states that he is petitioner above named; that he knows the contents of the above and foregoing petition and application and that the statements and allegations therein contained are true. Further affiant saith not.

ARTHUR CORELL.

Subscribed and sworn to before this 3″ day of February, 1921
[SEAL.] MARJORIE YATES,
Notary Public.

My commission expires December 29, 1924.

4 *Exhibit 1 to Petition—Copy of commitment, etc., of Arthur Correll issued out of the U. S. District Court, Southern District of Illinois.*

In the District Court of the United States for the Southern District of Illinois Northern Division.

THURSDAY, NOVEMBER 19, A. D. 1914.

Court met pursuant to adjournment.
Present: Honorable J. Otis Humphrey, Judge.

THE UNITED STATES *vs.* ARTHUR CORRELL, HARRY CLANAHAN, ALIAS Harry Bennett and Fred Mathers, alias Fred Warren.	Breaking into post office. Gen. No. 487.

And now on this 19th day of November, A. D. 1914, comes the United States, the plaintiff in this case, by Edward C. Knotts, Esq.,

United States attorney for the Southern District of Illinois, and comes also, the defendants Arthur Correll and Harry Clanahan, alias Harry Bennett, in the person and by Robert Scholes, their attorney, and the said defendants, being arraigned on the indictment herein for plea thereto, each says that he is not guilty as therein charged, and thereupon, on motion of the United States attorney, it is ordered by the court that this case be set down for trial on November 24th, 1914.

WEDNESDAY, NOVEMBER 25TH, A. D. 1914.

Court met pursuant to adjournment.
Present: Honorable J. Otis Humphrey, Judge.

THE UNITED STATES *vs.* ARTHUR CORRELL, HARRY CLANAHAN, ALIAS Harry Bennett, and Fred Mathers, alias Fred Warren.	Breaking into post office. Gen. No. 487. Indictment.

And now on this 25th day of November, A. D. 1914, comes the United States, the plaintiff in this case by Edward C. Knotts, Esq., United States attorney, and come, also the defendants Arthur Correll and Harry Clanahan, alias Harry Bennett, in person, and by Robert Scholes, their attorney. And issue being joined thereupon come a jury of good and lawful men, to wit: A. Rush, Chas. A. Wood, I. W. Miller, E. A. Tiffany, John W. Poper, Geo. Saurs, E. Catlin, E. P. Johnson, E. F. Schumacker, Scott Norris, D. E. White, J. U. Vaughan, who are duly sworn to well and truly try the issues joined in this case and a true verdict render according to the law and the evidence, and the jury, having heard the evidence in the case, the arguments of counsel, and the instructions of the court, retire to consider of their verdict and afterwards come into open court and for verdict say, "We, the jury find the defendant Arthur Correll, guilty," and being unable as to agree as to the defendant Harry Clanahan, alias Harry Bennett, are discharged from further service in this case.

And the defendant, Arthur Correll, being arraigned at the bar of the court for sentence and he having nothing to say why sentence should not now be pronounced against him, it is therefore considered and adjudged by the court that the defendant, Arthur Correll, for the offense by him committed in manner and form as charged in the said indictment and as found by the jury in this case, to be confined in the United States Penitentiary at Leavenworth, Kansas, for the term of three (3) years from this date, that [the] pay the costs of this prosecution and that execution issue therefor.

In the District Court of the United States of America for the Southern District of Illinois, Northern Division.

I, R. C. Brown, clerk of the District Court of the United States of America for the Southern District of Illinois, do hereby certify the foregoing to be a true and correct copy of the plea, trial, and

sentence, made and entered in said court on the 19th and 25th days of November, A. D. 1914, in a certain case wherein the United States is plaintiff and Arthur Correll, Harry Clanahan, alias Harry Bennett, and Fred Mathers, alias Fred Warren, are defendants, as the same appears from the records now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and
6 affixed the seal of said court at my office in Peoria, in said district and division, this 25th day of November, A. D. 1914.

R. C. BROWN, *Clerk.*
By J. B. JONES, *Deputy.*

A true copy.
W. M. FISHER,
Record Clerk.

[File endorsement omitted.]

Order granting leave to file petition for writ of habeas corpus as a poor person.

(Filed Feb. 4, 1921.)

In the matter of the application of Arthur Corall for writ of habeas corpus.

Now on this 18th day of January, 1921, it having been made to appear to the court that the above-named Arthur Corall desires to file a petition for a writ of habeas corpus to obtain his release from the United States Penitentiary at Leavenworth, Kansas, and that he is without sufficient means and is unable to give a bond for the costs in this court or to employ counsel, it is therefore ordered that Hon. Lee Bond, Esq., be, and is hereby appointed attorney to represent the said Arthur Corall in this behalf, and that the Arthur Corall be permitted to file his application for writ of habeas corpus without making a cash deposit for costs or giving a bond for costs in lieu thereof. It is so ordered.

JOHN C. POLLOCK, *Judge.*

[File endorsement omitted.]

Motion to dismiss petition for writ of habeas corpus.

(Filed Feb. 5, 1921.)

Comes now the respondent, August V. Anderson, warden of the United States Penitentiary at Leavenworth, Kansas, and moves the court to dismiss the petition for writ of habeas corpus herein for the following reasons:

1st. The petition does not state facts sufficient to give the court jurisdiction, power or authority to grant the writ as prayed.

7 2nd. The petition and the exhibits thereto show on their face that the petitioner has not completed the term of imprison-

ment imposed by the trial court, and is not entitled to release by habeas corpus.

Wherefore, respondent prays that said petition be dismissed and the writ denied.

A. V. ANDERSON,
Respondent.
By FRED ROBERTSON,
United States Attorney.
L. S. HARVEY,
Assistant [u.] S. Attorney.

Order, February 9, 1921, discharging petitioner and fixing amount of appeal bond.

(Filed Feb. 9, 1921.)

In the District Court of the United States, District of Kansas, First Division.

In the matter of the application of Arthur Corall for writ of habeas corpus. No. 2161.

Now, on this 9th day of February, 1921, this matter came on to be heard by the court upon the petition for writ of habeas corpus and the motion of the respondent to dismiss the same, and deny the writ; the petitioner appearing by Lee Bond, his attorney, the respondent appearing by L. S. Harvey, Assistant United States attorney; the court having examined the said petition and motion of the respondent to deny the writ and dismiss the petition, and having heard argument of counsel and being advised in the premises,

It is ordered that said motion be and the same is overruled; the respondent elects to stand on said motion and not plead further.

It is therefore now by the court considered, ordered, and adjudged that the said petitioner is illegally held in custody and restrained of his liberty, by the respondent, August V.
8 Anderson, warden of the United States Penitentiary at Leavenworth, Kansas, and the said warden is hereby ordered and directed to discharge said petitioner from said illegal confinement.

The respondent having given notice of intention to prosecute an appeal to the Circuit Court of Appeals for the Eighth Circuit, it is further ordered that the said petitioner, upon his discharge from said prison, give a bond in the sum of one thousand dollars ($1,000.00) conditioned and as required by the rules of this court and the rules of the Circuit Court of Appeals. It further appearing to the court that the said petitioner is unable to give surety, said bond when signed by said petitioner and approved by the clerk will be accepted without surety.

To all of which orders the respondent excepted and excepts.

JOHN C. POLLOCK,
Judge.

Petition for, and order allowing appeal.

(Filed Feb. 10, 1921.)

ARTHUR CORALL, PETITIONER,
vs.
AUGUST V. ANDERSON, WARDEN OF THE UNITED STATES Penitentiary at Leavenworth, Kansas, respondent. } No. 2161.

The above-named respondent, conceiving himself aggrieved by the decree, judgment, and order made and entered on the 9th day of February, 1921, in the above entitled cause, does hereby appeal from said decree, judgment, and order to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the assignments of error, which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record proceedings and papers upon which said decree, judgment and order
9 was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

FRED ROBERTSON,
United States Attorney,
L. S. HARVEY,
Assistant U. S. Attorney,
Attorneys for Respondent.

Now, on this 10th day of February, 1921, the foregoing claim of appeal is allowed.

JOHN C. POLLOCK, *Judge.*

Assignment of errors.

(Filed Feb. 10, 1921.)

Comes now the above named respondent and shows to the court that in the record and proceedings in the above entitled cause lately pending in this court there is manifest error in this, to wit:

1st. The court erred in overruling respondent's motion to dismiss the application and deny the writ.

2nd. The court erred in holding that the petitioner was unlawfully deprived of his liberty by the respondent.

3rd. The court erred in holding that there was no legal authority to authorize the Attorney General or board of parole to revoke petitioner's parole after the time the original sentence would have expired.

4th. The court erred in holding that the parole granted to the petitioner by the Attorney General and parole board was unlawfully revoked.

5th. The court erred in granting petitioner's application for the writ of habeas corpus and directing his release.

Whereas, by the law of the land the said writ of habeas corpus should have been denied and the petitioner remanded to the custody

of the respondent to serve out and complete the term of imprisonment imposed by the trial court. Wherefore, respondent prays that the decree, judgment, and order aforesaid may be reversed,
10 set aside, and held for naught, and for such other relief as may be proper in the premises.

FRED ROBERTSON,
United States Attorney.
L. S. HARVEY,
Assistant U. S. Attorney.

Bond on appeal.

(Filed Feb. 14, 1921.)

I, Arthur Corall as principal, acknowledge myself indebted to the United States of America, in the sum of one thousand dollars ($1,000.00) lawful money of the United States of America to be levied on my goods, chattels, lands, and tenements on this condition, that—

Whereas on the 9th day of February, 1921, in a certain action pending in the United States District Court for the District of Kansas, entitled: In the matter of the application of Arthur Corall for a writ of habeas corpus, the said United States District Court for the District of Kansas, entered an order granting a writ of habeas corpus for and on behalf of the said Arthur Corall and directing that he be released from the custody of A. V. Anderson, warden of the United States Penitentiary at Leavenworth, Kansas.

And whereas the said A. V. Anderson, warden as aforesaid, gave notice in open court of an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from said order discharging said Arthur Corall from custody, as aforesaid;

[Ans] Whereas the said United States District Court did on February 9th, 1921, order the said Arthur Corall be not required to give [surities] on said bond;

Now, therefore, if the said Arthur Corall shall appear and surrender himself to the United States District Court for the District of Kansas on and after the filing in said District Court of the mandate of the said Circuit Court of Appeals, and from time to time thereafter as he may be required to answer any further proceedings, and abide by and perform any judgment or order which may be had or rendered therein in this case, and shall abide and perform any judgment or order which may be rendered
11 in the United States Circuit Court of Appeals for the Eighth Circuit, then this obligation shall be void; otherwise to remain in full force and effect.

Witness my hand and seal this 11th day of February, 1921.

ARTHUR CORELL,
2700 Silver Leav Ave., Cincinnati, Ohio.

Approved and filed in the District Court on February 14, 1921.

Præcipe for transcript.

(Filed Mar. 22, 1921.)

The clerk will please prepare the record for review on appeal to the United States Circuit Court of Appeals for the Eighth Circuit, and certify the same; consisting of the following papers to wit:

Petition and exhibits thereto.

Motion to dismiss petition.

Order dated February 9, 1921, overruling the motion and directing the petitioner's discharge.

Petition for order allowing appeal.

Assignments of error.

Citation and bond.

L. S. HARVEY,
Assistant U. S. Attorney,
Attorney for Respondent.

Approved:
LEE BOND,
Attorney for Petitioner.

[File endorsement omitted.]

12 *Clerk's certificate to transcript.*

(Filed Mar. 26, 1921.)

UNITED STATES OF AMERICA,
District of Kansas, ss:

I, F. L. Campbell, clerk of the District Court of the United States of America, for the District of Kansas, do hereby certify the foregoing to be true and correct copies of so much of the record and proceedings in case No. 2161, entitled, In the matter of the application of Arthur Corall, for writ of habeas corpus, as is called for in the præcipe for the record, on file herein.

I further certify that the original citation is attached hereto and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said District of Kansas, this 25th day of March, 1921.

[SEAL.] F. L. CAMPBELL, *Clerk.*

[File endorsement omitted.]

Stipulation as to issuance of warrant of apprehension and return of appellee to penitentiary.

(Filed Mar. 30, 1921.)

In the United States Circuit Court of Appeals Eighth Circuit.

AUGUST V. ANDERSON, WARDEN OF THE UNITED States Penitentiary at Leavenworth, Kansas, appellant, *vs.* ARTHUR CORRAL, APPELLEE.	No. 5832.

Now, on this 28th day of March, 1921, as a part of the record in the above entitled cause, it is hereby stipulated and agreed by and between L. S. Harvey, assistant United States attorney, attorney for appellant, and Lee Bond, attorney for appellee, that the warrant for the apprehension of the above-named appellee, Arthur Corral as a parole violator was issued by the warden of the United States Penitentiary at Leavenworth, Kansas, on the 28th day of June,
13 1916, for his apprehension and return to said penitentiary to complete his sentence; and that said appellee was returned to said penitentiary as directed in said warrant on the 17th day of December, 1919.

L. S. HARVEY,
Attorney for Appellant.
LEE BOND,
Attorney for Appellee.

[File endorsement omitted.]

14 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

Appearance of counsel for appellant.

(Filed Mar. 30, 1921.)

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

No. 5832.

The clerk will enter my appearance as counsel for the appellant.

FRED ROBERTSON,
U. S. Attorney.
L. S. HARVEY,
Asst. U. S. Atty.
Both of Kansas City, Kans.

Appearance of counsel for appellee.

(Filed Apr. 29, 1921.)

The clerk will enter my appearance as counsel for the appellee.

LEE BOND.

15 *Order of submission.*

In U. S. Circuit Court of Appeals.

May Term, 1921.

WEDNESDAY, JUNE 1, 1921.

This cause having been called for hearing in its regular order, the same was argued by Mr. L. S. Harvey, assistant United States attorney, for appellant and submitted on brief of the appellee.

Thereupon, this cause was submitted to the court on the transcript of the record from said District Court and the briefs of counsel filed herein.

16 *Opinion in cases Nos. 5831, 5832, and 5833.*

(Filed Feb. 27, 1922.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5831. December Term, A. D. 1921.

AUGUST V. ANDERSON, WARDEN OF THE United States Penitentiary at Leavenworth, Kansas, appellant,
vs.
HARRY L. WILLIAMS, APPELLEE.
} Appeal from the District Court of the United States for the District of Kansas.

No. 5832. December Term, A. D. 1921.

AUGUST V. ANDERSON, WARDEN OF THE United States Penitentiary at Leavenworth, Kansas, appellant,
vs.
ARTHUR CORALL, APPELLEE.
} Appeal from the District Court of the United States for the District of Kansas.

No. 5833. December Term, A. D. 1921.

AUGUST V. ANDERSON, WARDEN OF THE United States Penitentiary at Leavenworth, Kansas, appellant,
vs.
FRED C. WIKE, APPELLEE.
} Appeal from the District Court of the United States for the District of Kansas.

17 Mr. L. S. Harvey, assistant United States attorney (Mr. Fred Robertson, United States Attorney, was with him on the brief), for appellant.

Mr. Turner W. Bell filed brief for appellee in case No. 5831.

Mr. Lee Bond and Mr. Harold Medill filed briefs for appellees in cases Nos. 5832 and 5833.

Before SANBORN and STONE, Circuit Judges and TRIEBER, District Judge.

SANBORN, Circuit Judge, delivered the opinion of the court.

These cases are presented here by appeals of the warden of the United States Penitentiary at Leavenworth, Kansas, from orders of the United States District Court for the District of Kansas, upon petitions for writs of habeas corpus, and responses of the warden directing him to discharge the petitioners, the appellees here, from confinement in that penitentiary. They present this question: When one has been convicted and sentenced by a Federal court for a violation of a Federal law to confinement in the penitentiary for a definite term, for example three years, has been confined in the penitentiary and has served under that sentence for several months, has been paroled and the term of his sentence, three years from his delivery into the penitentiary, has expired, may the board of parole, after the expiration of the three years of sentence, lawfully revoke the parole and authorize the warden to confine him in the penitentiary for a time equivalent to the difference between the time he was actually confined in the penitentiary before his parole and the time he would have been thus confined under his sentence if he had not been paroled? The court below ordered the discharge of the petitioners because it was of the opinion that this question should be answered in the negative.

The pertinent provisions of the statutes appear in the act of June 25, 1910, 36 Stat. 819, 820; U. S. Comp. Stat. sections 10537 and 10540. Section 10537, section 3 of the act, provides that, if, from a report of the proper officers of the prison or on the application by the prisoner for a release on parole, the fact that there is a rea-
18 sonable probability that such applicant will live and remain at liberty without violating the laws, appears to the board of parole, and if in the opinion of the board such release is not incompatible with the welfare of society, "then said board of parole may, in its discretion, authorize the release of such applicant on parole, and he shall be allowed to go on parole outside of said prison, and, in the discretion of the board, to return to his home, upon such terms and conditions, including personal reports from such paroled person, as said board of parole shall prescribe, and to remain, while on parole, in the legal custody and under the control of the warden of such prison from which paroled, and until the expiration of the term or terms specified in his sentence, less such good-time allowance as is or may hereafter be provided for by act of Congress; and the said board shall, in every parole, fix the limits of the residence of the person paroled, which limits may thereafter be changed in the discretion of the board." Section 10538, section 4, of the act, and section 10539, section 5, of the act, provide that, if the warden of the

penitentiary shall have reliable information that the prisoner has violated his parole, then said warden "at any time within the term or terms of the prisoner's sentence," may issue his warrant to any officer hereinafter authorized to execute the same for the retaking of such prisoner, and that any officer authorized to serve criminal process within the United States to whom such warrant shall be delivered, is authorized to execute the warrant by taking the prisoner and returning him to the penitentiary. Section 10540, section 6 of the act, provides that, at the next meeting of the board of parole held at the penitentiary, after the issuing of the warrant, the board shall be notified thereof, and if the prisoner has been returned to the penitentiary, "he shall be given an opportunity to appear before said board of parole, and the said board may then, or at any time in its discretion, revoke the order and terminate such parole or modify the terms and conditions thereof. If such order of parole shall be revoked and the parole so terminated, the prisoner shall serve the remainder of the sentence originally imposed; and the time the prisoner was out on parole shall not be taken into account to diminish the time for which he was sentenced."

In each of the cases under consideration the term of the sentence was a specified time from the commencement of the imprisonment, and in each of them the prisoner was paroled within that time,
19 and remained out of the penitentiary under the parole until after that time had expired before he was returned to the penitentiary, before his parole was revoked and before he was given an opportunity to appear before the board of parole in opposition to its revocation. For example, the appellant Williams, sentenced to confinement in the penitentiary for five years, commenced serving his sentence on November 18, 1912. His five years, expired November 18, 1917. On December 18, 1914, he was paroled. On June 10, 1919, he was returned to the penitentiary, and on September 12, 1919, the board of parole revoked his parole.

Counsel for the warden argue that the legal effect of the provisions of the parole act is to authorize the board of parole, at any time after the expiration of the time of the sentence, a part of which has been served during the parole, to revoke that parole for a violation of its condition and to confine the prisoner in the penitentiary for the length of time he served under the parole. But section 3 of the act provides that the board shall in every parole "fix the limits of the residence of the person paroled;" that he shall be permitted to go on parole outside of the prison "upon such terms and conditions, including personal reports from such paroled person, as said board of parole shall prescribe, and to remain, while on parole, in the legal custody and under the control of the warden of such prison from which paroled, and until the expiration of the term or terms specified in his sentence, less such good time allowance as is or may hereafter be provided for by act of Congress." As these appellees served parts of their sentences in the penitentiary and the

remainders thereof under the authorized amelioration of their sentences wrought by their paroles but still in the legal custody and under the control of the warden and all this time subject to the revocation of their paroles, it is difficult to resist the conclusion that as soon as the times prescribed by their sentences had passed the authority of the board to revoke their paroles and again to cause them to be imprisoned under their sentences had also passed.

Counsel for the warden concede that this would be the legal effect of the act if the provisions of section 3 on this subject stood alone, but they cite section 6, which declares that after a warrant for the return of a paroled prisoner has been issued by the warden at any time within the term or terms of the prisoner's sentence (section 4) and after he has been returned to the prison, and after he has been given an opportunity to appear before the board, the latter "may then or at any time in its discretion, revoke the order and terminate such parole or modify the terms and conditions thereof. If such order of parole shall be revoked and the parole so terminated, the said prisoner shall serve the remainder of the sentence originally imposed; and the time the prisoner was out on parole shall not be taken into account to diminish the time for which he was sentenced." They then argue that this section 6 when read with section 3, empowers the board at any time, even if a prisoner has served the time of his entire sentence partly by confinement in the prison and the remainder by service under the sentence as modified by the parole, to revoke the parole and compel him to serve by confinement in the prison that part of his sentence which he served under the parole. In support of this contention they have cited, and the court has examined Ex Parte Marcil, 213 Fed. 990, 992, wherein the prisoner was sentenced to imprisonment for five years, was paroled, his parole was revoked within the five years, and the court held that under section 6 he must serve the remainder of the sentence originally imposed without any deduction on account of the good time he had earned before he was paroled. But in that case the revocation was prior to the expiration of the term of five years from the commencement of the imprisonment, and conceding the soundness of the decision, it does not determine or indicate that the board of parole had any authority to take such action after the expiration of the five years, Doland's case, 101 Mass. 119, in which the holding was that a prisoner sentenced to confinement for four years, who escaped and remained at large for nearly a year, during which time the four years expired, had not satisfied the sentence of the court and must serve in prison that part of the four years which passed while he was at large. But there is no analogy between the rights of a prisoner who escapes from prison and remains free during the part of the term of his sentence and one who serves a part of the term of his sentence in the prison and the remainder out of the prison in the legal custody and control of the warden under a parole, Redman

v. Duehay, 246 Fed. (C. C. A.) 283; Morgan v. Adams, 226 Fed. (C. C. A.) 719; Miner v. United States, 224 Fed. (C. C. A.) 422; Morgan v. Ward, 248 Fed. (C. C. A.) 691. But none of the
21 decisions or opinions in these cases either determine or treat of the question at issue in the case at bar.

By the act of June 25, 1910, the Congress granted to the board of parole the authority during the term of the sentence of imprisonment adjudged by the court (1) to revoke an order of parole it had made, and (2) to terminate such parole, and it enacted that the effect of such revocation and termination should be that the prisoner should serve the remainder of the sentence originally imposed, and that the time the prisoner was out on parole should not be taken into account to diminish the time for which he was sentenced. That the Congress did not intend by this act to vest and did not vest in the board the power to revoke such a parole after the parole and the term of imprisonment had expired, and thereby to enable it at any time, perhaps years after the termination of both, to inflict upon the prisoner another term of confinement in the penitentiary for a length of time equal to that part of his sentence which he served under the parole, seems clear from the following considerations:

The Congress provided in section 3 of the act that the board might grant a parole of a prisoner which would allow him to go on parole outside the prison, and "to remain, while on parole, in the legal custody and under the control of the warden of such prison from which paroled, and until the expiration of the term or terms specified in his sentence, * * *" but not after the expiration of such sentence. The Congress provided by section 4 of the act, that if the warden of the prison should have information that the paroled prisoner had violated his parole "then said warden, at any time within the term or terms of the prisoner's sentence," but not after the expiration of such term or terms, "may issue his warrant * * * for the retaking of such prisoner." Section 6 provides that on the return of the prisoner under such warrant and after an opportunity for the prisoner to appear before the board, it "may then or at any time in its discretion revoke the order and terminate such parole" and that "if such order of parole shall be revoked and the parole so terminated" but not otherwise, or on any other condition, "the said prisoner shall serve the remainder of the sentence originally imposed" without any allowance on account of the time he served his sentence under the parole. But when, as in the cases in hand,
22 the terms of the sentences and the paroles had expired long before any hearings concerning or orders of revocation of the paroles, the latter, having already terminated, could not be terminated by orders of revocation or termination, and the prisoners could not fall under the provision of section 6 that where the paroles were terminated by the orders of revocation pursuant to the pro-

visions of the act, the prisoners should serve the remainders of their original sentences without any allowance for the terms they served under their paroles.

Cardinal rules of interpretation of statutes which condition the liberties of accused and convicted persons, are, that such statutes must receive a rational, sensible construction in preference to one that is unreasonable and probably not intended by the legislative bodies which enacted them, that their obvious natural meaning should be preferred to a recondite, strained, or improbable sense, and that if such statutes are ambiguous or their meaning is uncertain, the accused or convicted should receive the benefit of the doubt.

The act of June 25, 1910, contains no clear or expressed grant of authority to the board of parole to revoke or terminate a parole after the sentence of the prisoner paroled and the parole itself have expired. A construction of this act to the effect that it empowered the board of parole at any time, perhaps years after the expiration of the terms of the sentences of paroled prisoners to revoke their paroles and subject them to imprisonment for times equivalent to the parts of their terms which they served under their paroles, would be an unreasonable one, it would be one that probably never was considered or intended by the Congress. It is not the obvious, natural meaning of the terms of the act, but a concealed, strained, unreasonable interpretation of it, which cannot fairly be deduced from the terms of the act, its object and the circumstances in which it was enacted, and it is one which this court will hesitate long to impose upon it.

It is suggested and stated by counsel for the warden that the terms of the sentences of these appellees did not really expire when they had respectively served the entire terms of their sentences, parts of them in the penitentiary and the remainder of them under their paroles, that the paroles suspended the sentences and that consequently the revocations of these paroles, although after the expiration of the terms during which their respective fixed sentences
23 ran, were nevertheless before the expirations of the sentences.

This contention, however, fails to commend itself to our judgment. A parole of a prisoner by the board of parole under the act of June 10, 1906, is not a suspension of a sentence. On the other hand it is a substitution during the continuance of the parole, of a lower grade of punishment, by confinement in the legal custody and under the control of the warden within the specified prison bounds outside the prison, for the confinement within the prison adjudged by the court. It is the authorized substitution during the existence of the parole through the clemency of the board of a lighter punishment for that originally prescribed by the judgment. But the prisoner is not free of his sentence while he is out of the prison under the parole. He is still serving his sentence. By virtue thereof he is still confined within the specified bounds outside of the prison, still in the legal custody of the warden, and subject to all the terms of the

sentence of the court of which he is not expressly relieved, and the time of his confinement under the parole runs and must be allowed in his favor as long as his parole is not lawfully revoked to the same extent as it would have run and have been allowed if he had been actually confined in the penitentiary during that time. Woodward v. Murdock, 24 N. E. (Ind.) 1047, 1048; Ex Parte Prout, 86 Pac. (Idaho) 275, 276, 277; People v. Homer, 177 N. Y. Supp. 482. No error or mistake has been discovered in the negative answer given by the court below to the question involved in this case and stated in the opening of this opinion, nor in the orders challenged by these appeals, and they must therefore be and are

Affirmed.

[File endorsement omitted.]

24 *Decree.*

United States Circuit Court of Appeals, Eighth Circuit.

December Term, 1921.

MONDAY, FEBRUARY 27, 1922.

AUGUST V. ANDERSON, WARDEN OF THE UNITED STATES Penitentiary at Leavenworth, Kansas, appellant,
vs.
ARTHUR CORALL. } No. 5832.

Appeal from the District Court of the United States for the District of Kansas.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Kansas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby, affirmed without costs to either party in this court.

February 27, 1922.

25 *Clerk's certificate.*

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Kansas as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, and full, true, and com-

plete copies of all the pleadings, record entries, and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein August V. Anderson, warden of the United States Penitentiary at Leavenworth, Kansas, was appellant and Arthur Corall was appellee, No. 5832, as full, true, and complete as the originals of the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this first day of May, A. D. 1922.

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

26 In the Supreme Court of the United States.

October Term, 1922.

Stipulation as to return to writ of certiorari.

(Filed July 3, 1922.)

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit to the writ of certiorari granted therein.

JAMES M. BECK,
Solicitor General.
LEE BOND,
Counsel for Respondent.

June 15, 1922.

27 *Writ of certiorari and return.*

(Filed July 10, 1922.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the United States Circuit Court of Appeals for the Eighth Circuit, greeting:

Being informed that there is now pending before you a suit in which August V. Anderson, warden of the United States Penitentiary at Leavenworth, Kansas, is appellant, and Arthur Corall is

appellee, No. 5832, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the District of Kansas, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,
28 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twelfth day of June, in the year of our Lord one thousand nine hundred and twenty-two.

[SEAL.] WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

29 *Return to writ.*

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of August V. Anderson, warden, etc., appellant, v. Arthur Corall, No. 5832, is a full, true, and complete transcript of all the pleadings, proceedings, and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this sixth day of July, A. D. 1922.

[SEAL.] E. E. KOCH,
Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.

(Endorsed:) File No. 28,927. Supreme Court of the United States, No. 387, October term, 1922. August V. Anderson, warden, etc., vs. Arthur Corall. Received office of the clerk Supreme Court U. S. July 10, 1922.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

AUGUST V. ANDERSON, WARDEN, UNITED STATES Penitentiary, Leavenworth, Kansas, petitioner,

v.

ARTHUR CORALL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes August V. Anderson, warden of the United States Penitentiary at Leavenworth, Kansas, by James M. Beck, Solicitor General, and prays the court to issue a writ of certiorari in the above-entitled cause to the United States Circuit Court of Appeals for the Eighth Circuit.

STATEMENT OF CASE.

The respondent (petitioner in the District Court), Arthur Corall, was convicted in the United States District Court for the Southern District of Illinois of breaking into a post office, and was, on November 25, 1914, sentenced to be confined in the United States penitentiary at Leavenworth, Kansas, for the term of three years from that date (R. 4, 5).

He was duly paroled on February 24, 1916 (R. 2), under the authority of section 1 of the parole act of June 25, 1910, c. 387, 36 Stat. 819.

On June 28, 1916, the warden of the Leavenworth Penitentiary issued his warrant, under authority of section 4 of the said parole act, for the apprehension of Corall as a parole violator (R. 12).

Some time about October, 1916, Corall was sentenced to the State penitentiary at Joliet, Illinois, for a violation of the criminal laws of the State of Illinois, and was confined in said State penitentiary until December, 1919, when he was released from said penitentiary (R. 2) and returned to the authorities of the Leavenworth Penitentiary, December 17, 1919 (R. 13).

On January 12, 1920, at the next meeting of the board of parole after Corall's return to the penitentiary, he was given an opportunity to appear before the board, as required by section 6 of said parole act, his parole was revoked and he was held to satisfy the remainder of the sentence imposed upon him, excluding the period during which he was on parole, in accordance with the provisions of section 6 of said parole act. Thereupon he applied to the United States District Court for the District of Kansas for a writ of habeas corpus. The District Court held that since Corall had, on November 25, 1914, been sentenced to imprisonment for three years, his maximum term of imprisonment expired on November 25, 1917; that, therefore, the board of parole had no authority to act in his case and revoke his parole after said

period; and that, its action being void, Corall's imprisonment was without warrant of law. The court consequently granted the writ and discharged the petitioner.

On appeal the Court of Appeals for the Eighth Circuit, on February 27, 1922, affirmed the judgment, being also of the opinion that, under the provisions of sections 3, 4, and 6 of the parole act of June 28, 1910, c. 387, no action by the Federal authorities was authorized except during the term for which the convict had been originally sentenced.

THE STATUTE.

The sections of the parole act material to this application are as follows:

> SEC. 3. That if it shall appear to said board of parole from a report by the proper officers of such prison or upon application by a prisoner for release on parole, that there is a reasonable probability that such applicant will live and remain at liberty without violating the laws, and if in the opinion of the board such release is not incompatible with the welfare of society, then said board of parole may, in its discretion, authorize the release of such applicant on parole, and he shall be allowed to go on parole outside of said prison, and, in the discretion of the board, to return to his home, upon such terms and conditions, including personal reports from such paroled person, as said board of parole shall prescribe, and to remain, while on parole, in the legal custody and under the

control of the warden of such prison from which paroled, and until the expiration of the term or terms specified in his sentence, less such good time allowance as is or may hereafter be provided for by act of Congress; and the said board shall, in every parole, fix the limits of the residence of the person paroled, within which limits may thereafter be changed in the discretion of the board: *Provided*, That no release on parole shall become operative until the findings of the board of parole under the terms hereof shall have been approved by the Attorney General of the United States.

SEC. 4. That if the warden of the prison or penitentiary from which said prisoner was paroled or said board of parole or any member thereof shall have reliable information that the prisoner has violated his parole, then said warden, at any time within the term or terms of the prisoner's sentence, may issue his warrant to any officer hereinafter authorized to execute the same, for the retaking of such prisoner.

SEC. 5. That any officer of said prison or any Federal officer authorized to serve criminal process within the United States, to whom such warrant shall be delivered, is authorized and required to execute such warrant by taking such prisoner and returning him to said prison within the time specified in said warrant therefor. * * *

SEC. 6. That at the next meeting of the board of parole held at such prison after the issuing of a warrant for the retaking of any paroled prisoner, said board of parole shall be

notified thereof, and if said prisoner shall have been returned to said prison, he shall be given an opportunity to appear before said board of parole, and the said board may then at any time in its discretion revoke the order and terminate such parole or modify the terms and conditions thereof. If such order of parole shall be revoked and the parole so terminated, the said prisoner shall serve the remainder of the sentence orginally imposed; and the time the prisoner was out on parole shall not be taken into account to diminish the time for which he was sentenced.

REASONS FOR THE ALLOWANCE OF THE WRIT.

I.

The Court of Appeals placed its decision entirely upon formal, scholastic grounds and failed to appreciate the real application and effect of the true governing principle. The *ratio decidendi* of the Court of Appeals was that the sentence of a convict under the laws of the United States is a mere matter of dates, and that the power and authority of the United States over him is limited to and confined within these dates. For example, Corall was sentenced on November 25, 1914, for three years. Therefore (according to the Court of Appeals), lawful warrant for his imprisonment necessarily ceased not later than November 25, 1917, and the jurisdiction of the board of parole could only be validly exercised over him between November 25, 1914, and November 25, 1917. Any action of said

board outside those particular dates was *coram non judice* and void. Whereas the correct principle is based not on dates but on service. The sentence required by the law and pronounced by the court is that the convict shall *serve* for a certain time, and the sentence is not satisfied in law until the service fixed by the law has been rendered, no matter when that may be. There is no such thing as serving a sentence by not serving it. This well established rule can not be better stated than in the language of the Supreme Court of Massachusetts in *Dolan's case*, 101 Mass. 219, 222, 223:

> We are of opinion that the sentence of the law is to be satisfied only by the actual suffering of the imprisonment imposed, unless remitted by death or by some legal authority. The punishment is imprisonment, the period of which is expressed only by the designated length of time. Neither the date of its commencement, nor of its expiration, is fixed by the terms of the sentence. The last clause of § 21 of the Gen. Sts., c. 174, upon which the petitioner places some reliance, can have no other purpose or effect than to require that the time which may elapse between the order and the actual commitment shall be computed as part of the time of sentence imposed by the court. See St. 1859, c. 248.
>
> The petitioner also urges the consideration that, as the second sentence was made to take effect upon the expiration of the former sentence, a fixed time must be thereby necessarily implied in order to give certainty to

such an order. This is by no means requisite. If it were so, additional sentences would always be dependent upon the validity and the full execution, without remission, of all previous ones. But the validity of such additional sentences is never affected by the contingencies which render the duration of previous terms uncertain. *Kite* v. *Commonwealth*, 11 Met. 581. The time fixed for the execution of the second sentence is not the end of the limited period from the date of the order of commitment in the first case, but the end of the imprisonment under the first sentence, however that may be legally terminated. Expiration of time without imprisonment is in no sense an execution of sentence. The period of the second sentence will not begin to run until the first has been fully performed or legally discharged.

(See also *Petition of Moebus*, 73 N. H. 350, 352; s. c. 137 Fed. 154, 156.)

Apply this well settled rule to the facts of the present case, and the error of the Court of Appeals is obvious. Admittedly the respondent never served his sentence, and prima facie, therefore, his detention was lawful. The only plea offered to avoid this result is that he was paroled. Parole, however, is merely a grace granted to the prisoner by extending for his benefit (to use an old term) the liberties of the prison. He is still in the custody of the prison authorities (as is expressly provided by section 3 of the parole act). Being a mere act of grace extending the boundary of the prison, the continued

operation and benefit of the parole depend wholly upon a strict compliance with the conditions upon which it was granted. If those conditions be broken, if the parole be violated, the grace is withdrawn, the protection afforded by the parole is gone, and the paroled convict becomes an escaped prisoner and a fugitive from justice, just as truly as though he had broken the bars or scaled the walls of the prison.

In *Denkell* v. *Spiegel*, 68 Conn. 441, 449, 450, in holding that a parole violator was subject to extradition, the Supreme Court of Connecticut said:

> He was in this State not because of the parole but in violation of the parole. He has used the parole as a means by which to practice a fraud on the managers of the reformatory, thereby to escape from his imprisonment. If the plaintiff had escaped from the reformatory by force, he should unquestionably be returned; but a prisoner who eludes the vigilance of his keepers by fraud is in no better plight than one who does so by force. In the second of Coke's Institutes, at page 589, where the author discusses the statute against prison breaking, it is said: "He that is in the stockes, or under lawful arrest, is said to be in prison, although he be not *infra parietes carceris;* and therefore this branch extendeth as well to a prison in law as to a prison in deed." See also *Hobert* and *Stroud's case*, Cro. Car. 209; 4 Bl. Comm. 129; 2 Sw. Dig. 325. When the plaintiff was liberated from confinement within the reformatory and found himself at large in the State of New

> York, he was in effect within the prison liberties. But it is the settled doctrine on this subject that the liberties of the prison is an extension or enlargement of the walls of the prison. A person therefore is in prison, in legal contemplation, when within the liberties of the prison. An escape from the liberties is an escape from the prison. *Seymour* v. *Harvey*, 8 Conn. 63, 70.

In the rules and regulations governing the paroling of United States prisoners, issued in 1918 under the authority of section 2 of the parole act, a form of the warrant of arrest of a parole violator, as authorized by section 4 of the act, is given, in which the preamble states that the person described in the warrant, "having violated the conditions of his parole, is deemed to be a fugitive from justice from this penitentiary." And that this principle, viz, that a parole violator is in the same predicament in law as a person escaping from the actual confines of a prison, is applicable to such violator even after expiration of the formal term of his sentence was held in *People* v. *Coon*, 17 Misc. Reps. (N. Y.) 261, where the court said (pp. 262, 263):

> A prisoner who escapes from the institution and is recaptured is treated in the same manner as one who has been conditionally discharged and returned. A conditional discharge may be granted at any time within the period for which the person is sentenced. A prisoner may escape at any time during that period. No serious contention could be made that a

> prisoner who had escaped from the institution prior to the expiration of the original sentence, and was thereafter captured, could not be compelled under the statute to serve out the unexpired portion of her term. In the one case the prisoner is at liberty by virtue of her own act, while in the other she is at liberty by virture of the act of the board of managers. * * * No good reason can be suggested why, if an inmate conditionally discharged shall thereafter return to viciousness, she should not be retaken and compelled to serve out the unexpired portion of her sentence, although she be retaken and confined after the expiration of five years from the date of the imposition of the sentence. This seems to be the policy of the statute. It certainly is its natural and, I believe, its true construction.

The application of this principle to the situation presented in the present case wholly undermines the reasoning of the Court of Appeals, and is in this wise: By violation of his parole, the convict forfeits the grace extended to him by the parole act, and necessarily reverts to his former position. (See *Halligan* v. *Marcil*, 208 Fed. 403.) By this forfeiture, he loses the benefit of the parole as a service of his sentence outside the boundaries of the prison, and at the moment of such violation he ceases to serve his sentence just as truly as if he had escaped from the actual confines of the prison. The running of his legal period of service is suspended by his act and is not resumed until he returns to the prison. Therefore

the action of the board of parole, if taken any time before actual service of the sentence figured as above, is taken within the legal term of his sentence and is, therefore, valid, irrespective of any formal dates derived mathematically from the time and period of the original sentence. It is not claimed, therefore, by the Government (as the Court of Appeals conceived it was) that the board of parole can legally act after the expiration of the sentence. The claim is that the Court of Appeals estimated the length of the sentence formally by addition of figures, whereas it should have estimated the length of the sentence according to realities, viz, according to the real time actually served. If this had been done, it would at once have appeared that the action of the board of parole was taken before, not after, the expiration of the term of sentence.

The parole act of June 25, 1910, c. 387, seems to have been couched in language specifically intended to compel this conclusion. Section 3 of the act, in authorizing a warrant of arrest for parole violation, provides that such warrant may be issued "at any time within the term or terms of the prisoner's sentence." Section 6, however, which deals with the power of the board of parole to revoke the parole, provides that, at the next meeting of the board after the issuance of the warrant of arrest, the board shall be notified, and, if the prisoner shall have been returned to the prison, he shall have an opportunity to appear before the board, "and the said board may *then at any time in its discretion* revoke the order and terminate

the parole." Thus the act, after expressly referring to the term of the sentence in connection with the issuance of a warrant of arrest, drops this provision when it comes to the power of the board to revoke the parole, and substitutes for it an appearance of the prisoner and a decision by the board at any time within its discretion. As there could, in the nature of things, be no connection between the return of the prisoner and the formal termination of the period of his original sentence, it was necessary to provide (as it was provided) that the board might act at any time irrespective of such formal termination.

Of the decisions relied upon by the Court of Appeals to sustain its judgment, two of them, namely *Woodward* v. *Murdock*, 124 Ind. 439, and *In re Prout*, 12 Idaho, 494, are not in point, even if they be correctly decided. In those cases it was merely held that, in the absence of statute, a parole violator, when returned to prison, did not lose the benefit of the time passed on his parole up to the period of the violation. These cases throw no light upon the question as to whether the time passed after the violation of the parole can be counted as part of the service. The third case relied upon by the Court of Appeals, namely, *People* v. *Homer*, 177 N. Y. Supp. 482, is to some extent in point, but it is directly contrary to the decision of a coordinate court in *People* v. *Coon, supra*, and the opinion merely states the conclusion of the court, without assigning any reasons therefor.

II.

The question involved in this case is one of importance in the administration of the laws relating to Federal prisoners. If the decision of the Court of Appeals be accepted and followed, only one of two courses is open to the board of parole:

First. It may revoke the parole at once, upon being notified that a warrant of arrest for parole violation has issued, without waiting to hear the prisoner's defense.

To do this would seem to be to act in violation of section 6 of the act, which evidently contemplates a hearing before revocation of parole. Even if it be doubtful whether the act requires a hearing or not, the board of parole would hesitate to adopt such a summary procedure, because, once the parole is revoked, the action could not be rescinded, although the board subsequently became convinced that the prisoner had not violated his parole.

Second. It may wait until the prisoner has returned and can be heard. If this be within the formal term of the original sentence, the board would have power to act; otherwise (under the decision of the Court of Appeals), not.

The consequence of adopting this course would be that any parole violator who could successfully evade arrest until the formal term of his original sentence came around would successfully avoid serving his sentence, while the less astute violator would be returned to prison. And, of course, where the parole

violation itself landed the violator in a State prison for a period beyond the formal term of his original sentence, the board would be powerless.

It is submitted that the situation thus presented, involving as it does the parole of every Federal prisoner, is of sufficient importance to justify plenary consideration by this court.

JAMES M. BECK,
Solicitor General.
WILLIAM C. HERRON,
Attorney.

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No. 387.

IN THE

Supreme Court of the United States

OCTOBER TERM 1923

AUGUST V. ANDERSON, WARDEN, UNITED STATES PENITENTIARY, LEAVENWORTH, KANSAS, PETITIONER,

VS.

ARTHUR CORALL.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF ON BEHALF OF THE APPELLEE.

ARGUMENT OF BRIEF.

A statement of this case is made in petitioner's brief and covers all of the necessary facts.

As stated by petitioner there is one question only involved in this case, and that is whether or not the Board of Parole of the United States Penitentiary has the right to revoke a parole after the expiration of the entire term for which the prisoner is sentenced. In order to magnify the question we will present the

following case: A prisoner is sentenced to the prison for three years; he serves one year and is paroled; one of the conditions of the parole being that he shall not become intoxicated. During the two years while out on parole he is intoxicated on several occasions, arrested and fined, but his parole is not revoked, but a warrant is issued by the Board of Parole to the parole officer but not served. He is never fully discharged and at the end of ten years the Board decides to revoke his parole so they direct the officer to execute the warrant, which he does, and the prisoner is brought back to prison, and the Board then revokes his parole and orders him to serve the unexpired two years of his three year sentence. Has the Board this right, and if they have this right then could not the Board wait twenty years to revoke his parole?

The sections of the Parole Law pertinent to this case are set out in the appellant's brief, but we desire to again call attention to Section Three, and especially to that part of said section which we think bears directly on this case, and which is printed in caps.

> "Sec. 3. That if it shall appear to said Board of Parole from a report by the proper officers of such prison or upon application by a prisoner for release on parole, that there is a reasonable probability that such applicant will live and remain at liberty without violating the laws, and if in the opinion of the Board such release is not incompatible with the welfare of society, then said Board of Parole may in its discretion authorize the release of such applicant on parole, and he shall be allowed to go on parole outside of said prison, and, in the discretion of the Board, to return to his home upon such terms and conditions, including personal reports from such paroled person, as said Board of Parole shall prescribe, and to remain, while on parole, in the legal custody and under the control of the warden of such prison from which paroled, AND UNTIL THE EXPIRATION OF THE TERM OR TERMS SPECIFIED IN HIS SENTENCE less such good time allowance as is or may hereafter be provided for by Act of Congress; and the said Board

shall in every parole, fix the limits of the residence of the person paroled, which limits may thereafter be changed in the discretion of the Board; Provided, that no release on parole shall become operative until the findings of the Board of Parole under the terms hereof shall have been approved by the Attorney-General of the United States."

The question of the allowance of good time is not involved in this case as the entire term without good time allowance had expired before the appellee's parole was revoked by the Board. This particular question has evidently not been passed upon by any court or at least no decision can be found.

The result of a parole being granted a prisoner is simply allowing the prisoner to serve the balance of the term for which he is sentenced not in the penitentiary, but within the confines fixed by the parole and under its conditions so that it cannot be said that a prisoner who is sentenced to a term of years has not served his sentence until he has spent that particular number of years inside the prison walls. For instance, the prisoners at the Federal Penitentiary are classified so that some of them are never allowed outside the walls; some of them are allowed outside the walls, but only on special occasions, and with specified authority; others are allowed to go outside the walls and under certain conditions to go to the City of Leavenworth in the performance of their duties without a guard, yet it could not be said that they are not all serving their sentences even during the time they are not behind the prison walls, and the same reasoning must apply to a parole. When a prisoner is out on parole and his parole is not revoked until after the term for which he was sentenced expires, then he has served his sentence.

True it is that a parole is in the nature of a gratuity, and the conditions of the parole, and the conditions of the parole law, which are a part of the conditions of the parole, are that while he

is on parole and during the time within which the Board would have a right to terminate his parole he violates that parole, then the Board would have the right to take away all of the advantages of the parole, and cause him to serve his entire sentence, but to hold that the Board can wait until he has served his entire sentence, both in the prison and on parole, and then revoke his parole would be to say that the Board as a Board has right to increase the original punishment inflicted on the prisoner, which question has been decided so many times cannot be done, that it does not need citations here.

The good time earned by a prisoner while in the prison is also in the nature of a gratuity, which can be taken away from the prisoner if he violates any of the prison rules. Suppose a prisoner has served his term in the prison, and ha been allowed all of his good time, although during that service he violated one of the rules which, we will say, would take away thirty days of his good time if it had been enforced, but the prisoner is discharged, and a month after his discharge he comes back to the prison as a visitor and after he goes within the prison walls the warden orders him locked up, and informs him that he intends to make him serve thirty days that was allowed him as good time, because of a violation of the rules of which he was guilty, but the deduction of thirty days had been overlooked before the prisoner was discharged. There is no argument but what the warden would have no authority whatever to take such a course. Why is it any different when a man has served his prison term while on a parole which was not attempted to be revoked until after the expiration of his term?

This question is constantly before the State District Court at Leavenworth, and arises when parole officers from other states come to Leavenworth to get convicts after their service in one of the penitentiaries, who by reason of their confinement in the

penitentiary, have violated their parole from a prison of a sister state. There has never been any question but that unless the parole officer can show that the prisoner's parole was terminated prior to the expiration of his sentence the prisoner is entitled to relief on a writ of habeas corpus. While the parole laws of some of the states have different provisions from the Federal parole law, yet they are based on the same fundamental law that the conditions of paroles and the power of Boards cannot be enlarged and by their provision increase the fixed term for which a prisoner is sentenced. They can compel a prisoner to serve every day of his sentence, not including good time, but not one day more.

The following decisions of the State Courts seem to bear directly on this question:

> "But if no such forfeiture has been declared until the prisoner has served for such length of time that, with the diminution of sentence provided for, he is entitled to his discharge, he can, without question, secure his discharge in a legal proceeding."
>
> Davis vs. Hunter, 100 N. W. 510-512.

> "Conditions attached to a parole or pardon by the Board of Pardons that are to extend beyond or be performed after the expiration of the term for which the prisoner was sentenced are illegal, and cannot be enforced after the expiration of the term for which the prisoner was sentenced."
>
> Ex parte Prout, 86 Pac. 275.

> "Where relator was in Sing Sing in actual custody of the warden, serving a sentence imposed for an offense committed while he was on parole, when he was declared to be delinquent by Parole Board pursuant to Prison Law 216, 217, the Board was without power to compel his surrender for completion of first sentence, notwithstanding Section 214, as to legal custody and control, until he completed sen-

tence there, and where warrant, issued pursuant to Section 215 was not executed at time sentence was completed, he should be discharged."

People ex rel. Newton v. Warden of Dannemora Prison, Clinton County, 175 N. Y. S. 524.

"Where prisoner breaks parole, commits another crime, and is given another sentence, he cannot, after having served such sentence, and after having been discharged, and after expiration of period for which he was first sentenced, be re-arrested on an unexecuted warrant issued shortly after breaking of parole, and directing that he be taken and returned before expiration of his term, under Prison Law, 214, 216, and notwithstanding Section 217."

People ex rel. Irwin v. Homer, 177 N. Y. S. 482.

"A prisoner is entitled to his final release at the expiration of the time for which he was sentenced, less any credit for good time, earned, though for a part of the time he was out on parole."

Woodward vs. Murdock, 24 N. E. 1047.

It was only by virtue of the judgment of the Marion criminal court that the appellant was held as a prisoner. It, by its very terms, only condemned him for five years from its date, less any time for which, under the law, he might be entitled to credit. See, also, Section 6134, Rev. St. 1881. The law allowing him credit for good time entered into the judgment as if written therein, and therefore, by the very language of the judgment, the appellant's time expired on the 13th of December, 1889. The appellant could not extend the time of his imprisonment by contract with the governor, any more than he could have become a prisoner in the first instance by contract. It is only by virtue of the judgment of a court of competent jurisdiction that a citizen can be condemned to imprisonment, and when the time expires for which the sentence runs, as given in the judgment, the prisoner is entitled to his discharge."

Woodward v. Murdock, 24 N. E. 1047-1048.

In order to give force to the parole law all the sections of it must be construed together and in none of the sections does it attempt to give the power to the Parole Board to take any action after the term has expired for which the prisoner was sentenced.

The petitioner in our judgment is wrong in assuming that when the Warden issues a warrant that the prisoner then becomes an escaped convict, and immediately ceases to be serving his sentence. There is absolutely nothing in the law which gives the Warden any authority to terminate the parole and until the parole is terminated the prisoner can not be placed in the position of an escaped convict.

The petitioner contends that there is "no such thing as serving a sentence by not serving it" and argues that a violation of his parole requirements is in effect an escape from the limits of the prison as extended by the Parole Board. A man can violate his parole in many ways such as becoming intoxicated or any other act which the Board would consider of sufficient seriousness as to compel them to return him to the prison, but in case a prisoner should become intoxicated today and not violate his parole in any other way, could it be said that six months later, when the Board found out that he had been intoxicated, that they would then send for the prisoner and he would be considered as having been an escaped convict for six months. This argument can not have much weight.

There must be some action taken by the Board itself before the prisoner loses the rights given him by the parole.

In the opinion rendered by the Circuit Court of Appeals in this case the following language is used which seems to entirely cover the situation:

"Cardinal rules of interpretation of statutes which condition the liberties of accused and convicted persons, are, that such statutes must receive a rational, sensible construction, in preference to one that is unreasonable and probably not intended by the legislative bodies which enacted them, that their obvious natural meaning should be preferred to a recondite strained or improbable sense, and that if such statutes are ambiguous or their meaning is uncertain the accused or convicted should receive the benefit of the doubt."

279 Fed. 822.

We therefore would respectfully ask that the judgment of the District Court and of the Circuit Court of Appeals for the Eighth Circuit be affirmed.

LEE BOND,
Attorney for Appellee.

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

AUGUST V. ANDERSON, WARDEN, UNITED STATES PENITENTIARY, LEAVENWORTH, KANSAS, petitioner,
v.
ARTHUR CORRALL.
No. 387.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF ON BEHALF OF THE PETITIONER.

By this writ of certiorari the United States seeks to review a judgment of the Circuit Court of Appeals for the Eighth Circuit affirming a judgment of the United States District Court for the District of Kansas, First Division, sustaining a writ of habeas corpus and discharging the respondent, Corrall, from imprisonment in the penitentiary at Leavenworth, Kansas.

STATEMENT OF THE CASE.

Corrall was indicted, tried, convicted, and sentenced in the District Court for the Southern District of Illinois for the crime of breaking into a post office. The sentence, pronounced on the 25th day of November, 1914, required him to be confined in

the penitentiary at Leavenworth, Kansas, for the term of three years from that date (p. 4).

He remained in the penitentiary, serving his sentence, until February 24, 1916, when he was released upon parole pursuant to the Act of June 28, 1910, 36 Stats. 819.

While out on parole and in October, 1916, he was convicted of another crime in Illinois and sentenced to the State penitentiary at Joliet, where he remained confined until released in December, 1919 (p. 2).

On June 28, 1916, the warden of the penitentiary at Leavenworth, pursuant to section 5 of the Parole Act, issued his warrant for the apprehension of Corrall as a parole violater, but he was not arrested upon that warrant until his release from the penitentiary at Joliet upon the termination of his sentence by the State Court.

On the 17th day of December, 1919, pursuant to the warden's warrant, he was returned to the Leavenworth Penitentiary to serve the unexpired portion of his original sentence. After his return and in January, 1920, the Parole Board terminated his parole, and he continued to serve his sentence until February 4, 1921, when he filed in the District Court for the District of Kansas a petition for writ of habeas corpus (p. 2).

The warden moved to dismiss the petition, and the District Court denied the motion and ordered Corrall's discharge. Upon appeal to the Circuit Court of Appeals that court affirmed the District Court in an opinion by Judge Sanborn, which appears

ges 12 to 17 of the record. This court thereupon ed a writ of certiorari.

e specific point involved is the right of the e Board to revoke a parole after the term of the al sentence, as measured by the calendar, has ed, although the paroled prisoner has violated arole and the warden has issued a warrant for rrest within that term, and particularly, as in resent case, where the prisoner, while on parole, been convicted of another crime and has been y the State authorities in a penitentiary from h he can not be taken by the warden until his expires. The same principle would be involved had fled from the jurisdiction of the United s and remained beyond the jurisdiction until riginal term of sentence had expired.

e material sections of the Parole Act are as vs:

> SEC. 3. That if it shall appear to said board of parole from a report by the proper officers of such prison or upon application by a prisoner for release on parole, that there is a reasonable probability that such applicant will live and remain at liberty without violating the laws, and if in the opinion of the board such release is not incompatible with the welfare of society, then said board of parole may in its discretion authorize the release of such applicant on parole, and he shall be allowed to go on parole outside of said prison, and, in the discretion of the board, to return to his home, upon such terms and conditions, including personal reports from such paroled person, as said board

of parole shall prescribe, and to remain, while on parole, in the legal custody and under the control of the warden of such prison from which paroled, and until the expiration of the term or terms specified in his sentence, less such good time allowance as is or may hereafter be provided for by Act of Congress; and the said board shall, in every parole, fix the limits of the residence of the person paroled, which limits may thereafter be changed in the discretion of the board: *Provided*, That no release on parole shall become operative until the findings of the board of parole under the terms hereof shall have been approved by the Attorney-General of the United States.

SEC. 4. That if the warden of the prison or penitentiary from which said prisoner was paroled or said board of parole or any member thereof shall have reliable information that the prisoner has violated his parole, then said warden, at any time within the term or terms of the prisoner's sentence, may issue his warrant to any officer hereinafter authorized to execute the same, for the retaking of such prisoner.

SEC. 5. That any officer of said prison or any federal officer authorized to serve criminal process within the United States, to whom such warrant shall be delivered, is authorized and required to execute such warrant by taking such prisoner and returning him to said prison within the time specified in said warrant therefor. All necessary expenses incurred in the administration of this Act shall be paid out of the appropriation for the prison in connec-

tion with which such expense was incurred, and such appropriation is hereby made available therefor.

SEC. 6. That at the next meeting of the board of parole held at such prison after the issuing of a warrant for the retaking of any paroled prisoner, said board of parole shall be notified thereof, and if said prisoner shall have been returned to said prison, he shall be given an opportunity to appear before said board of parole, and the said board may then or at any time in its discretion revoke the order and terminate such parole or modify the terms and conditions thereof. If such order of parole shall be revoked and the parole so terminated, the said prisoner shall serve the remainder of the sentence originally imposed; and the time the prisoner was out on parole shall not be taken into account to diminish the time for which he was sentenced.

ARGUMENT.

The Government contends that the release of a prisoner upon parole under section 3 of the Act merely enlarges the limits of the prison. The prisoner is still in the legal custody of the warden, and though outside of the walls of the prison is still restrained of his liberty within the territorial and conditional limits fixed by the Parole Board.

When the warden issues his warrant under section 4 of the Act, the prisoner's right to be outside the prison ceases, and he becomes in contemplation of law an escaped prisoner and can be taken at any time and returned to the prison. This warrant

must, of course, under the terms of the Act, be issued "within the term or terms of the prisoner's sentence" as originally fixed, but the warrant may be executed at any time thereafter when the prisoner can be found.

If the prisoner runs away, secretes himself, or, as in the present case, commits acts which result in putting him in a State prison, where the warrant can not be executed until after the term of the original sentence, as measured by the calendar, has expired, nevertheless he has not thereby escaped service of his sentence. He can not serve his sentence by running away, hiding, or serving another sentence.

The Court of Appeals placed its decision upon the formal ground that the sentence of the convict under the laws of the United States is a mere matter of dates, and that the power and authority of the United States over him is limited to and confined within these dates. Corrall was sentenced on November 25, 1914, for three years. Therefore, according to the Court of Appeals, lawful warrant for his imprisonment necessarily ceased not later than November 25, 1917, and the jurisdiction of the Board of Parole could validly be exercised only between November 25, 1914, and November 25, 1917. The correct principle, as we contend, is based not on dates, but on service. The sentence required by the law and pronounced by the court is that the convict shall serve for a certain time, and the sentence is not satisfied in law until the service fixed by the law has been rendered, no matter when that may be. There

is no such thing as serving a sentence by not serving it, and when Corrall, in effect, escaped from the limits of the prison as extended by the Parole Board and by violation of the law of Illinois got himself self into the Joliet Penitentiary, he ceased temporarily to serve his sentence in the Leavenworth Penitentiary just as truly as if he had escaped and fled to Mexico or Canada. If he had done the latter we do not think it would be claimed that he could remain without the limits of the United States until the 26th of November, 1917, and then return, defy the United States authorities, and claim that he had served his sentence. This principle has been well stated by the Supreme Judicial Court of Massachusetts in *Dolan's Case*, 101 Mass. 219, 222, as follows:

> The petitioner seeks to be discharged on the ground that the term for which he was committed has expired by mere lapse of time; although the period of his actual imprisonment has been less than that for which he was sentenced, by reason of his escape and absence at large for nearly a year during the time.
>
> We are of the opinion that the sentence of the law is to be satisfied only by the actual suffering of the imprisonment imposed, unless remitted by death or by some legal authority. The punishment is imprisonment, the period of which is expressed only by the designated length of time. Neither the date of its commencement, nor of its expiration, is fixed by the terms of the sentence. The last clause of §21 of the Gen. Sts. c. 174, upon which the petitioner places some reliance, can have no

other purpose or effect than to require that the time which may elapse between the order and the actual commitment shall be computed as part of the time of sentence imposed by the court. See St. 1859, c. 248.

The petitioner also urges the consideration that, as the second sentence was made to take effect upon the expiration of the former sentence, a fixed time must be thereby necessarily implied, in order to give certainty to such an order. This is by no means requisite. If it were so, additional sentences would always be dependent upon the validity and the full execution, without remission, of all previous ones. But the validity of such additional sentences is never affected by the contingencies which render the duration of previous terms uncertain. *Kite* v. *Commonwealth*, 11 Met. 581. The time fixed for the execution of the second sentence is not the end of the limited period from the date of the order of commitment in the first case, but the end of the imprisonment under the first sentence, however that may be legally terminated. Expiration of time without imprisonment is in no sense an execution of sentence. The period of the second sentence will not begin to run until the first has been fully performed or legally discharged.

To the same effect is *Petition of Moebus*, 73 N. H. 350, which was a petition for writ of habeas corpus. In that case it appeared that the petitioner, under the name of Shinborn, had been, in 1865, sentenced to imprisonment for ten years in the State prison.

After a few months he escaped, but was recaptured in 1900 and had since beem confined in prison. The petition for habeas corpus was filed in 1905, so, as the Supreme Court of New Hampshire found, Shinborn's actual imprisonment had been about five years. The court, quoting from the *Dolan Case, supra,* held that his continued confinement was lawful under the sentence originally imposed; and also refers to the fact that his application to the Federal Court had the same result. See 137 Fed. 154.

In *People* v. *Coon,* 17 Misc. (N. Y.) 261, it was held that a prisoner conditionally discharged from a House of Refuge for Women before the expiration of the term for which she was sentenced may, upon violation of the condition, be rearrested and confined for a period equal to the unexpired portion of such term, although such rearrest and confinement took place after the expiration of the original term. That case was an application for discharge by writ of habeas corpus from the House of Refuge for Women at Hudson, New York. In dismissing the petition Justice McLaughlin, of the Supreme Court of New York, now a judge of the Court of Appeals of that State, said:

> A prisoner who escapes from the institution and is recaptured is treated in the same manner as one who has been conditionally discharged and returned. A conditional discharge may be granted at any time within the period for which the person is sentenced. A prisoner may escape at any time during that

> period. No serious contention could be made that a prisoner who had escaped from the institution prior to the expiration of the original sentence, and was thereafter captured, could not be compelled under the statute to serve out the unexpired portion of her term. In the one case the prisoner is at liberty by virtue of her own act, while in the other she is at liberty by virtue of the act of the board of managers. * * * No good reason can be suggested why, if an inmate conditionally discharged shall thereafter return to viciousness, she should not be retaken and compelled to serve out the unexpired portion of her sentence, although she be retaken and confined after the expiration of five years from the date of the imposition of the sentence. This seems to be the policy of the statute. It certainly is its natural, and, I believe, its true construction.

In the case of *Drinkall* v. *Spiegel* 68 Conn. 441, it appeared that the plaintiff was tried, convicted, and imprisoned in the State of New York for burglary. During his term of imprisonment he was permitted to leave the reformatory by its managers, upon his agreement to comply with certain conditions sanctioned by the law of that State. These conditions he violated and fled to Connecticut, where he was arrested upon a requisition for his surrender to the New York authorities. Upon habeas corpus it was held by the Supreme Court of Errors of Connecticut that he was none the less a fugitive from justice because he had escaped from imprisonment

after being allowed to go outside the prison walls on his parole. In delivering the opinion of the court Chief Justice Andrews said:

> He was in this State, not because of the parole, but in violation of the parole. He has used the parole as a means by which to practice a fraud on the managers of the reformatory, thereby to escape from his imprisonment. If the plaintiff had escaped from the reformatory by force, he should unquestionably be returned; but a prisoner who eludes the vigilance of his keepers by fraud, is in no better plight than one who does so by force. In the second of Coke's Institutes, at page 589, where the author discusses the Statute against prison breaking, it is said: "He that is in the stockes, or under lawful arrest, is said to be in prison, although he be not *infra parietes carceris;* and therefore this branch extendeth as well to a prison in law, as to a prison in deed." See also *Hobart* and *Stroud's Case,* Cro. Car. 209; 4 Bl. Comm. 129; 2 Sw. Dig. 325. When the plaintiff was liberated from confinement within the reformatory and found himself at large in the State of New York, he was in effect within the prison liberties. But it is the settled doctrine on this subject that the liberties of the prison is an extension or enlargement of the walls of the prison. A person therefore is in prison, in legal contemplation, when within the liberties of the prison. An escape from the liberties is an escape from the prison. *Seymour* v. *Harvey,* 8 Conn. 63, 70.

The application of these principles to the situation presented in the present case shows the error in the reasoning of the Court of Appeals. When Corrall violated his parole and the warden issued a warrant for his arrest, he had forfeited the grace extended to him by the Parole Act and lost the benefit of the parole as a service of his sentence outside the boundaries of the prison and then and there ceased to serve his sentence just as truly as though he had broken the bars or scaled the walls of the prison. The running of the legal period of service was suspended and was not resumed until he returned to the prison. Therefore the action of the Board of Parole, if taken at any time before actual service of the sentence, figured in this way, was taken within the legal term of the sentence and was valid irrespective of any formal dates derived mathematically from the time and period of the original sentence.

The Government does not claim that the warden would have had any right to issue his warrant after the expiration of the calendar period of the sentence as originally fixed. That period, as originally fixed, would have expired, as we have pointed out, on November 25, 1917, and we concede that it would be absurd to claim that thereafter—perhaps years later—the warden, on learning that during the period of his parole Corrall had committed some offense, could thereupon issue a warrant and bring him back to the penitentiary. What we do claim is that at any time prior to November 25, 1917, the warden had the power to issue the warrant, which could be executed at any

time thereafter, and the Parole Board might then act upon his case.

The Parole Act seems to have been couched in language intended to compel this conclusion. Section 4 of the Act, in authorizing a warrant for arrest for parole violation, provides that such warrant may be issued "at any time within the term or terms of the prisoner's sentence." Section 6, however, which deals with the power of the Board of Parole to revoke the parole, provides that at the next meeting of the board after the issuance of the warrant the board shall be notified, and, if the prisoner shall have been returned to the prison, he shall have an opportunity to appear before the board, "and the said board may then or at any time in its discretion revoke the order and terminate such parole." Thus the Act, after expressly referring to the term of the sentence in connection with the issuance of a warrant, drops this provision when it comes to the power of the board to revoke the parole and substitutes for it an appearance by the prisoner before the board at any time within its discretion. As there could, in the nature of things, be no necessary connection between a return of the prisoner and the formal termination of the period of his sentence, it was necessary to provide, as was done, that the board might act at any time, irrespective of such formal termination.

Of the decisions relied upon by the Court of Appeals to sustain its judgment, two of them, *Woodward* v. *Murdock*, 124 Indiana, 439, and *In re*

Prout, 12 Idaho, 494, are not in point, even if they be correctly decided. In those cases it was merely held that, in the absence of statute, a parole violator when returned to prison, did not lose the benefit of the time passed on his parole up to the period of the violation. These cases throw no light upon the question whether time passed after the violation of the parole and the issue of a warrant based thereon can be counted as part of the service.

The other case relied upon by the Circuit Court of Appeals, *People ex rel. Irwin* v. *Homer*, 177 N. Y. Supp. 482, officially reported 107 Misc. 677, is, to some extent in point, but its authority has, we think, been destroyed by the New York Court of Appeals in *People ex rel. Newton* v. *Twombly*, 228 N. Y. 33. The history of this case is interesting.

The prisoner, under the name of Irwin, had been convicted in September, 1912, of the crime of burglary and sentenced to Sing Sing Prison under an indeterminate sentence, of which the maximum was 5 years. He was thereafter transferred, pursuant to the prison law of New York, to Great Meadow Prison, from which in March, 1914, he was paroled. While on parole, and within a few weeks, he committed another burglary, for which he was convicted in May, 1914, under the name of Newton, and was sentenced to Sing Sing under a definite sentence of 4 years. While serving there it was discovered that Newton was Irwin. Thereupon a warrant was issued that he be arrested for breach of his parole and on June 19, 1914, the board declared him delinquent.

He was taken to Great Meadow Prison and was thereafter transferred to Dannemora, from which, after the expiration of the term of his second sentence, he was discharged in March, 1919, upon habeas corpus, the decision of the court being reported as *People ex rel. Newton* v. *Warden of Dannemora Prison*, 107 Misc. 48, the Special Term Justice holding that he was serving the unexpired maximum of the first sentence while he was serving his second sentence. He was immediately rearrested under the delinquency warrant and taken to Great Meadow, from which he was released upon habeas corpus under the name of Irwin by the same Justice, and this case is the one mentioned in the opinion of the Circuit Court of Appeals and is reported as *People ex rel. Irwin* v. *Homer*, 107 Misc. 677, the court holding that what it had said about the want of power of the Parole Board to compel the relator's surrender for the completion of his first sentence while he was serving his second sentence was not intended as, and was not, a decision that the warrant under the existing situation could be executed after the expiration of his second sentence.

Appeals were taken to the Appellate Division of the Supreme Court from both these decisions, which were affirmed in 190 App. Div. 882 and 887, respectively. From these decisions, appeals were taken to the Court of Appeals. They were argued together and decided at the same time. The appeal involving the decision in 107 Misc. 677 was dismissed (228 N. Y. 513). On appeal from the order affirming 107 Misc. 48,

the Court of Appeals reversed the order of the Appellate Division, dismissed the writ, and remanded the relator to the custody of the warden of the prison. *People ex rel. Newton* v. *Twombly*, 228 N. Y. 33. The Court of Appeals took a view of the case quite different from that entertained by the courts below and regarded the case as really dependent upon whether or not the sentences under the two convictions were to be served concurrently and not consecutively, holding that they should run consecutively and that the declaration of delinquency, when followed by the return of the prisoner, postponed the execution of the second sentence until the execution of the first had been completed. The highest court of New York, therefore, upon all the facts which were before the Justice in the court below, refused to follow his reasoning and returned the prisoner to the State prison. It is of importance to note that Judge Cordoza, delivering the unanimous opinion of the Court of Appeals, used the following language (p. 36), which is in accord with the views hereinbefore expressed and the authorities hereinbefore cited:

> A prisoner who has escaped could not avoid the effect of section 2190 of the Penal Laws and make his sentences concurrent by serving a few weeks of the later sentence before revealing his identity. A prisoner who has broken his parole is in the same plight for most purposes as one who has escaped. (*Drinkall* v. *Spiegel*, 68 Conn. 441.) "He that is in the stockes, or under lawful arrest, is said to be in prison, although he be not *infra*

> *parietes carceris;* and therefore this branch [the statute against prison breaking] extendeth as well to a prison in law, as to a prison in deed." (Coke's Institutes, p. 589, quoted in *Drinkall* v. *Spiegel, supra,* p. 449.)

The question involved in this case is one of importance in the administration of laws relating to federal prisoners, and it is the opinion of the Government that the decision of the Court of Appeals, if followed, will tend to lessen materially the beneficent purpose of the law. It is hardly necessary to disclaim any desire on the part of the Department of Justice to keep in confinement men who should and might be at large. It is far better for the men themselves, so long as they conduct themselves properly, to be on parole than to be within the walls of a prison, and it is far better for the Government and for the prison authorities; but the moral restraint upon the men on parole of the knowledge that a violation of parole, a return to vicious or criminal practices, will inevitably bring about their return to the penitentiary, is a salutary one. If they entertained the belief, as they do from the decision of the Court of Appeals, that they can defeat the law by fleeing or hiding until a certain date has passed, and will then be beyond the reach of the arm of justice, some of the salutary restraint which continually urges them to decency of life will have gone. Many men would not hesitate to flee to Canada or Mexico, or other foreign parts, if they knew that after a few months there they could safely return. Comparatively few

would do so if they knew that they could never again safely return to this country. The country would probably be well rid of the few who would do so, and their example would undoubtedly have a restraining influence for good upon their less reckless brothers, who, though convicted of crime, were unwilling to renounce home, friends, and country for the sake of a few months of lawless freedom.

If the decision of the Court of Appeals be followed, it might be within the power of the Parole Board, at once upon being notified that a warrant of arrest for parole violation had been issued by the warden, to revoke the parole without waiting to hear the prisoner's defense. To do this, however, would seem to be in violation of the spirit, at least, if not the letter of section 6, which evidently contemplates a hearing before revocation of parole. This would, however, be a summary and drastic procedure which a Parole Board, conscientiously minded to do justice to a prisoner, would hesitate to adopt, for it has been decided by the Circuit Court of Appeals for the Ninth Circuit in *Hallegan* v. *Marcil*, 208 Fed. 403, that the revoking of a parole forfeits all good conduct time previously earned by the prisoner, and by the District Court for the Western District of Washington in *Ex parte Marcil*, 213 Fed. 990, that it prevents the convict from thereafter earning time for good conduct. Because of the mandatory language of section 6 of the Parole Act, that if the parole be revoked "the said prisoner shall serve the remainder of the sentence originally imposed," it

would seem to be extremely doubtful, to say the least, whether the board, having once revoked a parole, could reconsider and reverse their action, even though persuaded that they had acted erroneously or perhaps hastily. It is obvious that the Parole Board would be reluctant, without giving the prisoner an opportunity to be heard, to take action which might result in injustice and hardship.

For these reasons the judgment of the Circuit Court of Appeals should be reversed.

JAMES M. BECK,
Solicitor General.
ALFRED A. WHEAT,
Special Assistant to the Attorney General.

APRIL, 1923.

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